IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6823 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA CENTRAL CO-OP BANK LTD

Versus

AB GOR OR SUCCESSOR

Appearance:

1. Special Civil Application No. 6823 of 1998

MR BS PATEL for Petitioner.

Mr. PD Bhate, AGP for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Collector and Additional Superintendent of Stamps, State of Gujarat, Gandhinagar dated 9.6.1998 by which in exercise of power under Section 39(1)(b) of the Bombay

Stamps Act, 1958, the petitioner Cooperative Bank is directed to pay an amount of Rs. 3,59,950 towards deficit stamp duty and Rs. 3,59,950 towards penalty, in all Rs. 7,19,900.

2. Housing loans as well as vehicle loans were given to the employees of the petitioner Bank and some documents were executed by the employees of the petitioner Bank while taking the aforesaid loans. It was found on investigation that the said documents can be considered to be mortgaged documents and therefore proceedings came to be initiated and show cause notices came to be issued by the respondent Collector & Additional Superintendent of Stamps, State of Gujarat. It appears from the impugned order that inspite of the fact that applications for adjournment were given and in fact adjournments were also given no reply was filed by the petitioner and therefore the impugned order has been passed.

3. Ms. Kiran Pande, for Shri BS Patel, learned advocate appearing on behalf of the petitioner has submitted that in fact the impugned order itself is a non-speaking order. There is no discussion whatsoever in the order on the basis of which the petitioner may be directed to make payment of Rs. 3,59,950 towards deficit stamp duty and Rs. 3,59,950 towards penalty, and therefore requested to quash and set aside the impugned order.

4. Shri Pradip Bhate, learned AGP has fairly conceded that in the impugned order the Collector and Additional Superintendent of Stamps, State of Gujarat, has not given any finding and/or given any particulars on the basis of which the impugned order has been passed asking the petitioner to pay the amount of Rs. 3,59,950 by way of deficit stamp duty and Rs. 3,59,950 towards penalty.

5. In that view of the matter, only on the ground that the impugned order is a non-speaking order and no particulars are given, the same is required to be quashed and set aside and the same is hereby quashed and set aside. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs. This Court has not expressed anything on the merits of the case and only on the gruond that the impugned order is a non-speaking order the same is quashed and set aside. The matter is remanded to the respondent for passing an order afresh in accordance with law and on merits after giving opportunity to the

petitioner. The petitioner is directed to cooperate and file reply if any. It will be open for the petitioner to take all the contentions which are available to it.

[M.R. Shah, J.]

rmr.